

## IN THE MICHIGAN COURT OF APPEALS

### ORDER

Re: **People of MI v Robert Wayne Poling**

Docket No. **282163**

L.C. No. **06-003790-FH**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The delayed application for leave to appeal filed on November 28, 2007, is DISMISSED for lack of jurisdiction because it was not filed within 12 months of the September 21, 2006 judgment of sentence as required by MCR 7.205(F)(3), nor was MCR 7.205(F)(4) satisfied because the postjudgment motion was not filed within 6 months of the judgment of sentence. The Court would note that a motion for relief from judgment could not have been filed on August 10, 2007, because appellant still had a direct appeal available from the judgment of sentence. See MCR 6.501 and MCR 6.508(D)(1). Also the trial court did not review the motion under the required standards of MCR 6.508. Lastly, defendant has not argued in the application for leave to appeal that defendant is entitled to relief under MCR 6.508. In fact, defendant does not even mention MCR 6.508. In sum, a defendant cannot circumvent the six-month limitation of MCR 7.205(F)(4) by claiming to file a motion for relief from judgment and then in the application argue it as if the appeal is a direct appeal from the judgment of sentence.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 12 2007

Date

*Sandra Schultz Mengel*

Chief Clerk